

ASSEMBLY BILL

No. 843

Introduced by Assembly Member Block

February 26, 2009

An act to amend Sections 19570 and 19590 of the Government Code, relating to state employees. .

LEGISLATIVE COUNSEL'S DIGEST

AB 843, as introduced, Block. State employees.

(1) Existing law prescribes procedures for taking adverse action against state employees, other than managerial employees.

This bill would remove the exclusion for managerial employees with respect to these procedures.

(2) Existing law relating to adverse actions against managerial employees provide that if the adverse action was a demotion or dismissal from state civil service, the State Personnel Board is required, after a specified investigation or hearing, to affirm or reduce the action, or restore or reinstate the employee. The adverse action may be modified only if the board determines that there is no substantial evidence to support the reason or reasons for disciplinary action, or that the disciplinary action was made in fraud or bad faith. In any such proceeding, the disciplined managerial employee has the burden of proof, and subject to rebuttal by the employee, it is presumed that the action was free from fraud and bad faith and that the statement of reasons in the notice of disciplinary action is true.

This bill would delete the provision that the disciplined managerial employee has the burden of proof, and would delete the presumptions that the action was free from fraud and bad faith and that the statement of reasons in the notice of disciplinary action is true.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19570 of the Government Code is
2 amended to read:
3 19570. As used in this article “adverse action” means dismissal,
4 demotion, suspension, or other disciplinary action. ~~This article~~
5 ~~shall not apply to any adverse action affecting managerial~~
6 ~~employees subject to Article 2 (commencing with Section 19590),~~
7 ~~except as provided in Sections 19590.5, 19592, and 19592.2.~~
8 SEC. 2. Section 19590 of the Government Code is amended
9 to read:
10 19590. Notwithstanding Article 1 (commencing with Section
11 19570), persons who have been designated as managerial
12 employees under Section 3513 from the beginning of their current
13 appointment, but whose positions are not in the career executive
14 category, shall hold their appointments subject to the following
15 adverse action process:
16 (a) The employee may be demoted, dismissed, or otherwise
17 disciplined under this section for any of the causes specified in
18 Section 19572, but shall not be disciplined for any cause
19 constituting prohibited discrimination as set forth in Sections 19700
20 to 19703, inclusive.
21 (b) At least 20 days prior to the effective date of the disciplinary
22 action, the appointing power shall give the employee written notice
23 of the proposed action setting forth the reasons for the action, the
24 effective date of the action, the right of the employee to answer
25 the notice orally or in writing within 10 days of receipt of notice,
26 and the employee’s appeal rights. Within 15 days after the effective
27 date of the disciplinary action, a copy thereof shall be filed with
28 the board.
29 (c) The board, at the written request of a disciplined managerial
30 employee filed within 30 days of the employee’s receipt of the
31 notice of the disciplinary action, may investigate with or without
32 a hearing the reasons for the action.
33 If the adverse action taken against the employee was a
34 disciplinary action other than demotion or dismissal, the board

1 shall, after the investigation or hearing, affirm, reduce, or overturn
2 the action of the appointing power.

3 If the adverse action taken against the employee was a demotion
4 or dismissal from state civil service, the board shall, after the
5 investigation or hearing and subject to Section 19592.5, affirm or
6 reduce the action, restore the employee to the position from which
7 he or she was demoted, or reinstate the employee to the position
8 from which he or she was dismissed or to a position to which he
9 or she could have transferred.

10 The decision of the board to modify the action of the appointing
11 power pursuant to this subdivision shall be taken only if the board
12 determines, after investigation or hearing, that there is no
13 substantial evidence to support the reason or reasons for
14 disciplinary action, or that the disciplinary action was made in
15 fraud or bad faith. ~~In any such proceeding, the disciplined~~
16 ~~managerial employee shall have the burden of proof. Subject to~~
17 ~~rebuttal by the employee, it shall be presumed that the action was~~
18 ~~free from fraud and bad faith and that the statement of reasons in~~
19 ~~the notice of disciplinary action is true.~~